United Nations HRI/CORE/MWI/2014

International Human Rights Instruments

Distr.: General
23 March 2015

Original: English

Common core document forming part of the reports of States parties

Malawi*

[Date received: 25 June 2014]

* The present document is being issued without formal editing.

GE.15-06107 (E)

1506107

Please recycle

Contents

		Paragraphs	Page
I.	General information about Malawi	1–37	3
A.	Introduction	1	3
B.	Geographic, demographic, economic, social and cultural characteristics of Malawi	2–37	3
1.	Geographic, demographic and social characteristics	2–15	3
2.	Economic characteristics	16–22	7
3.	Millennium Development Goals	23–24	8
4.	Crime rate	25–28	10
5.	HIV and AIDS	29–37	13
II.	Constitutional, political and legal structure of Malawi	38–75	14
III.	General framework for the protection and promotion of human rights	76–122	19
A.	General framework	76–82	19
B.	Universal periodic review	83	20
C.	International human rights instruments and treaty domestication	84	21
D.	The Judiciary	85–87	21
E.	Human Rights Commission	88	22
F.	The Ombudsman	89	22
G.	Law Commission	90–98	22
H.	Electoral Commission	99	23
I.	Prison Service	101–106	24
J.	Malawi Police Service	107–111	25
K.	Ministry of Gender, Children and Social Welfare	112	26
L.	Ministry of Justice and Constitutional Affairs	113–119	26
M.	Civil society	120	28
N.	Anti-Corruption Bureau	121–122	28
IV.	Equality, non-discrimination and effective remedies	123–137	29
A.	Equality and non-discrimination	123–132	29
B.	Effective Remedies	133–137	31
Appendix I: Status of Law Reform of Programmes in Malawi (1996–2011)			32
Appendix II: List of Human Rights Instruments to which Malawi is a Party			35

[1] Appendices are not translated and are in English only

I. General information about Malawi

A. Introduction

1. The Government of the Republic of Malawi is pleased to submit this core document in line with the United Nations Harmonized System on reporting under the international human rights instruments. The present document contains a background to Malawi in broad terms, relating to the general characteristics of the country. The information is updated to 2012 where applicable and is relevant for the reporting period up to 2012.

B. Geographic, demographic, economic, social and cultural characteristics of Malawi

1. Geographic, demographic and social characteristics

2. Malawi lies to the South of the equator, bordered to the North and North East by the United Republic of Tanzania; to the East, South, and South West by the Republic of Mozambique; and to the West and Northwest by the Republic of Zambia.

3. The country is 901 kilometres long and varies between 80 to 161 kilometres in width. The total area is approximately 118,484 square kilometres, of which 94,276 square kilometres is land. The remainder comprises water bodies, the largest of which is Lake Malawi, which is about 475 kilometres long and delineates Malawi's eastern boundary with Mozambique and Tanzania. Malawi's most striking topographic feature is the Great Rift Valley, running along the length of the country and in which Lake Malawi lies. Lake Malawi, one of the largest freshwater lakes in Africa, drains through the Shire River into the Zambezi River in Mozambique. Malawi's highest point is Mount Mulanje, which rises 3,000 m above sea level.

4. The country is divided into three administrative regions: the Northern, Central, and Southern Regions which are further divided into 28 districts as follows: Six districts in the Northern Region, nine in the Central Region and thirteen in the Southern Region. Under Local Government, each district is divided under Chiefs, the lowest being a Village Headman and the highest chief being a Paramount Chief. In between, there are Group Village Headmen; Traditional Authorities; Chiefs; and Senior Chiefs. However, not all districts have Paramount Chiefs, who are usually appointed under ethnic groups rather than location.

5. Malawi has a tropical continental climate with maritime influences. Rainfall and temperature vary depending on altitude and proximity to the lake. From May to August, the weather is cool and dry. From September to November, the weather becomes hot. The rainy season begins in October or November and continues until April.

6. Malawi is a multi-ethnic nation. The fifth and most recent Population and Housing Census was conducted in June 2008. Table 1 shows how the population has grown from 4,039,583 in 1966 to 13,077,160 in 2008, an increase of 9,000,000. The 2008 Census was a major tool for assessing Malawi's progress in attainment of the Millennium Development Goals.

Age and sex distribution

7. The 2008 census results show that in Malawi 2.8 million were aged under five years and about 6.0 million were aged 18 years or more. At national level the census results reveal that about 7 percent of the total population in Malawi is comprised of infants aged

less than 1 year, 22 percent were aged under five years and about 46 percent were aged 18 years or older, while a further 4 percent were aged 65 years or older. The median age of the population in Malawi is 17 years, which shows that Malawi has a youthful population.

Persons with disability

8. Disability was defined as having difficulties or problems in one or all of the following areas: seeing, hearing, speaking and walking/climbing. The total number of persons with disabilities was 498,122, representing about 4 percent of the total population. There are differences between urban and rural areas. Of the people with disability, there were 452,743 in the rural areas and 45,379 in the urban areas. 133,273 (26.7 percent) had problems with sight, 108,870 (21.9 percent) had problems with walking, 82,180 (16.5 percent) had hearing problems and 30,198 (less than one per cent) had speech problems.

Population density

9. Figure 1 gives population density by region and district for 2008. Over the past three decades, population density has shown an upward trend. The population density increased from 85 persons per square kilometre in 1987 to 105 persons per square kilometre in 1998 and further to 139 persons per square kilometre in 2008. Across the regions, there are more persons per square kilometre in the Southern Region (184) than in the Central Region (155) and the Northern Region (63).

Table 1
Malawi population since 1901

Year of Census	*Total Population*	*Average Annual Intercensal Growth Rate %*
1901	737,153*	-
1911	970,430*	2.8
1921	1,201,983*	2.2
1926	1,263,291	1.5
1931	1,573,454	4.4
1945	2,049,914	2.2
1966	4,039,583	3.3
1977	5,547,460	2.9
1987	7,988,507	3.7
1998	9,933,868	2.0
2008	13,077,160	2.8

Source: National Statistics Office

Figure 1
Showing population density in Malawi

Source: National Statistics Office 2008

Birth rate and mortality rate

10. There were 516,629 children born to all women in the 12 months prior to the Census date. This gives the reported or unadjusted crude birth rate (CBR)[7] of 39.5 births per 1,000 population. The CBR was higher in rural areas (40.4) than in urban areas (34.6). At regional level the CBR was 39.9 births per 1,000 population in the Northern Region, 40.5 in the Central Region and 38.6 in the Southern Region. The total fertility rate (TFR) is defined as the number of births a woman would have if she survived to the end of her childbearing age, which ranges from 15–49 years, and experienced the current observed age-specific fertility rates. In 1998, the unadjusted TFR was at 5.2 children per woman.

Crude death rate (CDR)

11. CDR is defined as the number of deaths that occurred in a given calendar year per 1,000 population. The 1998 Census showed that about 208,000 deaths took place in Malawi during the 12-month period prior to the census. As a result the CDR in Malawi at that time was about 21.1 deaths per 1,000 population. The 2008 Census shows that a total of 135,865 deaths occurred during the 12 months prior to the census, which gives a CDR of 10 deaths per 1,000 population.

12. Early childhood mortality rates based on data from the 2010 MDHS are presented in table 8 for the three five-year periods preceding the survey. For the five years immediately

[7] The crude birth rate (CBR) is defined as the number of births that occurred in a particular year per 1,000 population.

preceding the survey (2005–2010), the infant mortality rate was 66 deaths per 1,000 live births. The estimate of child mortality (age 12 months to 4 years) is 50 deaths per 1,000 live births, while the overall under-5 mortality rate for the same period was 112 deaths per 1,000 live births. The neonatal mortality rate is 31 deaths per 1,000 live births. The post-neonatal mortality rate is 35 deaths per 1,000 live births. An examination of mortality levels across the three successive five-year periods shows that under-5 mortality rates have declined from 180 deaths per 1,000 live births during the late 1900s (circa 1995–2000) to 112 deaths per 1,000 live births in the late part of this decade (2005–2010). Most of the decrease in mortality occurred outside of the neonatal and post neonatal periods. Infant mortality decreased from 92 deaths per 1,000 live births to 66 deaths per 1,000 live births in the same period.

Literacy rates

13. Literacy is defined as an ability to read and write in any language. During the census, respondents aged 5 years and above were asked questions related to education and literacy status. There were 10.6 million people aged 5 years and older. Out of these, 6.8 million were literate, representing a 64 percent literacy rate. There were 2.9 million literate people in the Southern Region, 2.8 million in the Central Region and 1.1 million in the Northern Region. There were 5.4 million (59 percent) literate women and 5.2 million men (69 percent) in Malawi during the census period. The official standard entry age for primary education in Malawi is 6 years. The 2008 census results showed that out of a p lation of 10,241,359 persons aged 6 years and over, 2,856,101 (28 percent) were currently attending school. Out of those currently attending school, 2.1 million (74 percent) were aged 6–13 years, 581,606 (20 percent) were aged 14–17 and 170,114 (6 percent) were 18 years and older.

Religion

14. Malawi has the reputation of a God-fearing nation although the State is secular in nature. The population is divided among two major faiths: Christianity and Islam. Other significant religions include Hinduism; Baha'i Faith; and Traditional Religions. Although Christianity and Islam are the major religions, each one is not homogenous and supports various divisions. For Christianity, the main groups are Roman Catholics; Presbyterians; Anglicans; Adventists; Pentecostals; and Apostolic churches; while for Muslims, the main groups are Quadria; Sunni; and Sukut.

15. Table 2 shows the breakdown of Malawi's population by religion. It shows that Malawi's major religions are Christianity and Islam.

Table 2
***De jure* population distribution by religion, 2008**

Total		*Christian*	*Muslim*	*Other*	*None*
Malawi	**13,029,498**	**10,770,229**	**1,690,087**	**242,503**	**326,679**
Urban	1,946,637	1,680,834	234,261	17,408	14,134
Rural	11,082,861	9,089,395	1,455,826	225,095	312,545
Male	**6,370,935**	**5,213,900**	**821,139**	**120,930**	**214,966**
Urban	986,845	845,237	122,277	9,126	10,205
Rural	5,384,090	4,368,663	698,862	111,804	204,761
Female	**6,658,563**	**5,556,329**	**868,948**	**121,573**	**111,713**
Urban	959,792	835,597	111,984	8,282	3,929

Total		*Christian*	*Muslim*	*Other*	*None*
Rural	5,698,771	4,720,732	756,964	113,291	107,784

Source: National Statistics Office 2008.

2. Economic characteristics

16. The economy of Malawi is based primarily on agriculture, which accounts for 30 percent of the Gross Domestic Product (GDP). The country's major exports are tobacco, tea and sugar. They account for approximately 85 percent of Malawi's domestic exports. Mining is relatively new in Malawi with the main export being Uranium mined in the northern district of Karonga. Tourism, which is overwhelmingly wildlife- and nature-based, is also a major income earner although the industry remains relatively underexploited.

17. The currency for Malawi is Kwacha divided into 100 tambala. In 2012, the Kwacha was valued at K250.00 to a United States Dollar.

18. The overarching strategy for spurring economic growth in Malawi is the Malawi Growth and Development Strategy (MGDS) II: 2012-2016. The MGDS II, as a medium-term strategy, is designed to attain the aspirations set out in Vision 2020: a policy framework that sets out a long-term development agenda for the country. The objective of the MGDS II, like its predecessor MGDS: 2006-2011, is to reduce poverty through sustainable economic growth and infrastructure development.

19. The MGDS II has six broad thematic areas which are: Sustainable Economic Growth; Social Development; Social Support and Disaster Risk Management; Infrastructure Development; Improved Governance; and Cross-Cutting Issues. The six thematic areas has also identified nine key priority areas drawn from the thematic areas which are: Agriculture and Food Security; Transport Infrastructure and Nsanje World Inland Port; Energy, Industrial Development, Mining and Tourism; Education, Science and Technology; Public Health, Sanitation, Malaria and HIV and AIDS Management; Integrated Rural Development; Greenbelt Irrigation and Water Development; Child Development, Youth Development and Empowerment; and Climate Change, Natural Resources and Environmental Management.

20. The reporting period saw the expiry of the Malawi Growth and Development Strategy (MGDS): From Poverty to Prosperity, 2006-2011 in 2011. The MGDS had five thematic areas, at inception, and these were: sustainable economic growth, social protection, social development, infrastructure development, as well as improved governance. The MGDS recognised that any social economic development hinges to a very large extent on good governance and posited that the success of the strategies suggested depends much on the prevalence of good governance.

21. The first MGDS, which ran from 2006 to 2011, aimed at creating wealth through sustainable economic growth as a means of reducing poverty. Initially the strategy focused on six priority areas, which were revised to nine in 2009. Government believes that the successful implementation of the key priority areas will have positive implications on the achievement of the Millennium Development Goal and other pertinent development indicators.

22. The MGDS II is complemented by the Poverty Reduction Strategy Paper (PRSP) which was launched in 2002, and the Malawi Economic Growth Strategy (MEGS), which was launched in 2004. Government believes that these instruments will accelerate the attainment of the Millennium Development Goals .

3. Millennium Development Goals

23. Government, in a bid to unequivocally reduce poverty and improve the welfare of the citizens, signed the Millennium Declaration at the United Nations General Assembly in New York in September 2000. The attainment of the Millennium Development Goals in Malawi, as stated above, is being achieved through the MGDS, now MGDS II.

24. This Part highlights the achievements made towards attainment of Millennium Development Goal targets. Government notes that there are challenges along the way and is putting major efforts into overcoming these challenges to ensure that Malawi attains the Millennium Development Goal targets by 2015:

(a) Eradicate extreme poverty and hunger

(i) Proportion of population living below US$1.00 per person per day: The baseline in 2000 was 53.9%, which decreased to 39% as at October 2011. The target set for 2015 is 27%.

(ii) Poverty Gap Ratio: In 2000, the baseline was 18.6%, which decreased to 17.8% in October 2011. The 2015 target is 8%.

(iii) Poorest Quintile Share in National Consumption: Baseline in 2000 was 10%. The status as of October 2011 was 10.1%. Target for 2015 is set at 20%.

(iv) Prevalence of Underweight Children: Baseline in 2000 was 25.4%. Current status as of October 2011 was 12.8%. The target for 2015 is 14%.

(v) Proportion of population below minimum level of dietary energy consumption: Baseline in 2000 was 23.6%. Current status as of 2011: it decreased to 15%. The target to be met in 2015 is 11.8%.

From this information it has been concluded that achieving Goal 1, to eradicate extreme poverty and hunger, is likely to be met.

(b) Achieving universal primary education

(i) Net Enrolment in Primary: Baseline in 2000 was 78%. The current status as of October 2011 increased to 80.2%. The target set for 2015 is 100%.

(ii) Proportion of Pupils Starting Grade 1 Reaching Grade 5: Baseline in 2000 was 69%. Its current status as of October 2011 increased to 73.5%. The target to be met in 2015 is set at 100%.

(iii) Literacy rate 15–24 years: Baseline in 2000 was 68.1%. Its current status as of 2011 increased to 84%. The target set for 2015 is 100%.

Achieving Universal Primary Education by 2015 is unlikely to be met.

(c) Promote gender equality and empower women

(i) Ratio of girls to boys in Primary Education: Baseline in 2000 was 0.91. The current status as of October 2011 increased to 1. The target set for 2015 is 1.

(ii) Ratio of girls to boys in Secondary Education: Baseline in 2000 was 0.6, current status as of October 2011 increased to 0.78. The target to be met for 2015 is 1.

(iii) Ratio of literate women to men 15–24 years old: Baseline in 2000 was 0.82. The current status as of October 2011 increased to 0.94. The target for 2015 is set at 1.

(iv) Share of women in wage employment in the non-agricultural sector: Baseline in 2000 was 13. 1%. The current status as of October 2011 increased to 15%. The target for 2015 is 50%.

(v) Proportion of seats held by women in Parliament: Baseline in 2000 was 9.3%, the current status as of October 2011 increased to 22%. The 2015 target is 50%.

Achieving Goal 3, to promote gendered equality and empower women, is unlikely to be met.

(d) Reduce child mortality

(i) Under5 mortality rate (per 1,000): Baseline in 2000 was 189 (per 1,000). The current status as of October 2011 decreased to 112 (per 1,000). The target set for 2015 is 78 (per 1,000).

(ii) Infant mortality rate (per 1,000): Baseline in 2000 was 103 (per 1,000). The current status as of October 2011 decreased to 66 (per 1,000). The 2015 target is set at 44.7 (per 1,000).

(iii) Proportion of 1-year-old children immunized against measles: Baseline in 2000 was 83.1%. The current status as of October 2011 increased to 93%. The target set for 2015 is 100%.

Achieving the targets for Goal 4, to reduce child mortality, is likely to be met.

(e) Improve maternal health

(i) Maternal mortality ratio (per 100,000): Baseline in 2000 was 1,120 (per 100,000). The current status as of October 2011 decreased to 675 (per 100,000). The target to be met in 2015 is 155 (per 100,000).

(ii) Preparation of births attended by skilled health personnel: Baseline in 2000 was 55.6%. The current status as of October 2011 increased to 73%. The target set for 2015 is 100%.

Achieving the targets for Goal 5, to improve maternal health is unlikely to be met.

(f) Combat HIV and AIDS, malaria and other diseases

(i) HIV prevalence among 15–24 year old pregnant women: Baseline in 2000 was 24.1%. The current status as of October 2011 decreased to 12%. The target set for 2015 is 0%.

(ii) Ratio of Orphans to non-orphans in school: Baseline in 2000 was 0.121. The current status as of October 2011 decreased to 0.12.

(iii) Death rates associated with malaria: Baseline in 2000 was 3.6%. The current status as of October 2011 decreased to 2.8%.

(iv) Access to Malaria treatment: Baseline in 2000 was 8%. The current status as of October 2011 decreased to 2.8%.

(v) Proportion of households with at least one insecticide-treated mosquito net (ITN): Baseline in 2000 was 31%. The current status as of October 2011 increased to 56.8%.

(vi) Death rates for Tuberculosis: Baseline in 2000 was 22%. The current status as of October 2011 reduced to 7%.

(vii) Proportion of TB cases under directly observed treatment (DOTS): Baseline in 2000 was 57%. The current status as of October 2011 increased to 87%.

Achieving Goal 6, to combat HIV/AIDS, malaria and other diseases, is likely to be met.

(g) Ensure environmental sustainability

(i) Proportion of land covered by forest: Baseline in 2000 was 37.9%. The current status as of October 2011 decreased to 36.2%. The target set for 2015 is 50%.

(ii) Proportion of area protected to maintain biological diversity: Baseline in 2000 was 0.16%. The current status as of October 2011 remained the same, 0.16%. The target set for 2015 is 0.18%.

(iii) Proportion of population using solid fuel: Baseline in 2000 was 97.9. The current status as of October 2011 increased to 98%. The target set for 2015 is 0%.

(iv) Proportion of population with sustainable access to an improved water source: Baseline in 2000 was 47%. The current status as of 2011 had increased to 81%. The target set for October 2015 is 74%.

(v) Proportion of population with sustainable access to improved sanitation: Baseline in 2000 was 81.4%. The current status as of October 2011 had increased to 93%. The target for 2015 is 86.2%.

(vi) Slum population as percentage of urban population: Baseline in 2000 was 92%. The current status as of October 2011 decreased to 67.7%.

Achieving Goal 7, to ensure environmental sustainability, is uncertain.

(h) Develop a global partnership for development

(i) Net official development assistance (ODA) as a percentage of Real Gross Domestic Product: Baseline in 2000 was 12%. The current status as of October 2011 increased to 13%.

(ii) Unemployment of 15–24 year olds (urban): Baseline in 2000 was 1%. The current status as of October 2011 increased to 4%.

(iii) Cellular subscribers per 1,000 population: Baseline in 2000 was 1.8%. The current status as of October 2011 increased to 22.5%.

(iv) Telephone lines subscribers per 1,000 population: Baseline in 2000 was 0.57%. The current status as of October 2011 increased to 1.19%.

(v) Internet users per 1,000 population: Baseline in 2000 was 0.007%. The current status as of 2011 had increased to 16.8%.

Achieving Goal 8, to develop a global partnership for development, is likely to be met.

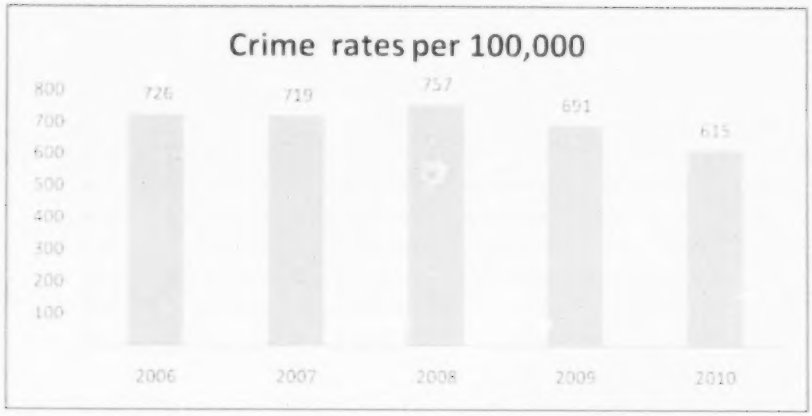
4. Crime rate

25. One of the goals of the MGDS is to reduce crime for the safety and security of the citizens in the country. The figure below shows the crime rate in Malawi between 2006 and 2010. The crime rate is defined as the total number of crimes reported by the Police in the particular year divided by the total population multiplied by 100,000. In the 2010 baseline assessment a trend in crime rate shows the crime rates declining from 726 per 100,000 population in 2006 to 719 in 2007, representing a 1 percent decline. However in 2008 the crime rate increased to 757 cases per 100,000, representing an increase of 5 percent, and started another decline in 2009 to 691 cases per 100,000, representing a decline of 9 percent, and then 615 in 2010, representing an 11 percent decline. The analysis shows that

the crime rate is declining; sustaining this level of decline can achieve better outcomes and impact.

26. Sexual offences deserve special attention: in 2010, a total of 1,679 sex-related cases were reported to and registered by Police compared to 1,183 cases registered in the year 2009. This represents an increase in sexual offences of 42% and translates into an average of almost 140 sex-related offences in a month. (*National Police Headquarters, 2010*).

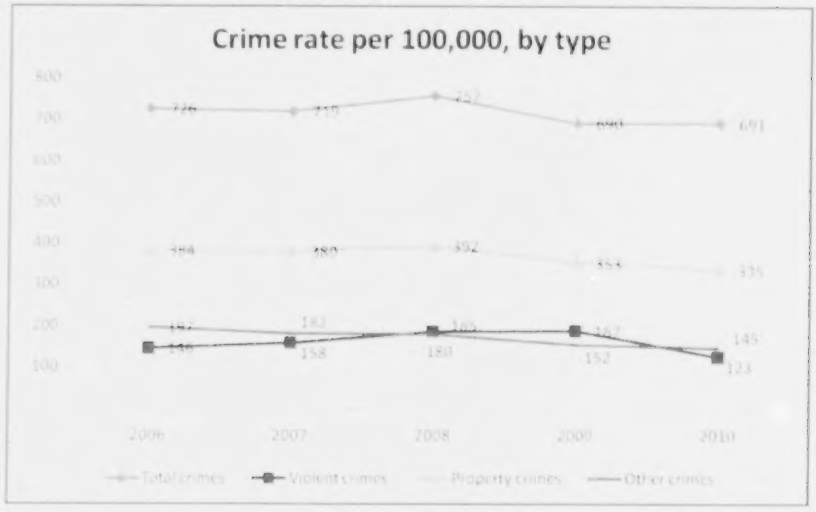
Figure 2
Police reported crime rate per 100,000 population 2006–2010



Source: Malawi Justice Baseline Survey, 2011

27. In order to inform reforms and identify high-impact interventions an analysis was made to answer the question "what type of crimes are increasing or decreasing?", using offences categories as presented in the standard offences classification scheme in Box 1 below. The results show that the rate for property crimes declined during the period from 2008 to 2010. A similar pattern is shown for other crimes, whilst violent crimes seem to be on the increase since the year 2006.

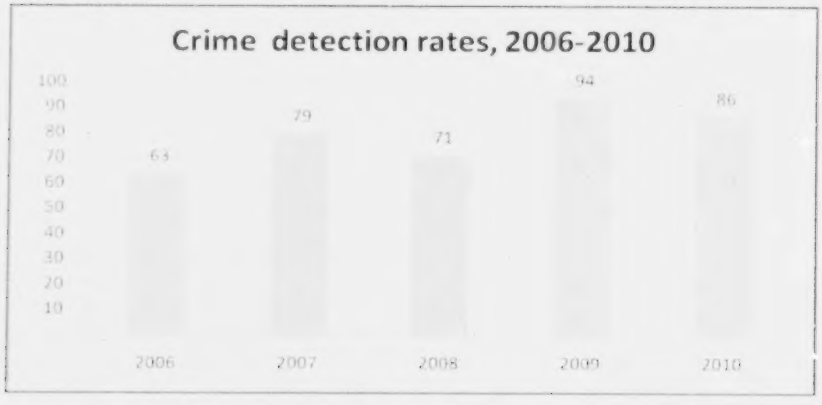
Figure 3
Trends in police-reported crime rate, Malawi, 2006–2010



Source: Malawi Justice Baseline Survey, 2011

28. Crime detection rate is an outcome indicator that may lead to reduced crime levels. The crime detection rate is the number of cases investigated, charged and brought before prosecution divided by the total number of cases reported to police. The baseline assessment shows that crime detection has been hovering around 86 percent of all cases reported to the police in 2010; the trend shows that in 2006 the crime detection rate was 63 percent and in 2007 the crime detection rate was 79 percent and increased to 94 percent in 2009. This is an improvement compared to the baseline value of 24 percent in 2005 (MGDS, 2006). The results show that when there is an increase in crime detection there is correspondingly a reduction in crime rate levels.

Figure 4
Trends in crime detection rates 2006–2010



Source: Malawi Justice Baseline Survey, 2011

5. HIV and AIDS

29. The first case of HIV infection was reported in Malawi in 1985. The initial response was to respond to the new disease with a bio-medical approach. The National AIDS Control Programme (NACP) was set up in 1989 under the Ministry of Health. The approach of the NACP, being largely biomedical, led to a number of governance and structural problems. The NACP also lacked sufficient authority as a programme to respond quickly and decisively to the fast growing epidemic.

30. In 2001, Government created a public trust called National AIDS Commission to replace the NACP and also to inculcate the new paradigm of HIV and AIDS beyond bio-medical understanding. Until 2002, NAC operated under the Ministry of Health and reported to the Cabinet Committee on HIV and AIDS and Health. In August of that year, the reporting structure was changed and NAC, through the Office of the President and Cabinet, reported to the Minister responsible for HIV and AIDS, who was the President himself. The change in the reporting structure of NAC to the Office of the President and Cabinet was made with a view to bringing the highest political office to commit fully to fighting the epidemic and to ensure Government oversight activities at the highest political level. This change brought NAC under the direct control of the President. This reporting structure was executed through the Minister of State responsible for Presidential Affairs.

31. In April 2003, a Ministry exclusively responsible for HIV and AIDS was established. The Chairperson of NAC, then, reported directly to the Minister. After the General Elections in May, 2004, the Ministry responsible for HIV and AIDS was abolished and in the same year, the Department of Nutrition, HIV and AIDS was established under the Office of the President and Cabinet. Government realized that issues of HIV and AIDS cannot be separated from nutrition for a developing country such as Malawi. In line with principles of national policy enshrined in the Constitution, it was considered that embracing nutrition as an accompaniment of the fight against the spread of HIV would go a long way in prolonging life and improving survival chances for the infected.

32. The Department was established with a view to providing policy direction and guidance, overseeing and facilitating mainstreaming and the creation of operational structures with respect to nutrition and HIV and AIDS. The Department is also responsible for the facilitation of the enactment and enforcement of legislation and networking on issues of nutrition and HIV and AIDS. The objectives of the Department are to formulate and review nutrition, HIV and AIDS policies and to implement strategies; to provide guidance and support for the implementation of government policies on nutrition, HIV and AIDS; and to monitor and evaluate the implementation of government policies on nutrition and HIV and AIDS.

33. In October 2003, Malawi adopted her first HIV and AIDS Policy under the theme "A Call to Renewed Action". It was meant to guide the National Response in an effort to prevent the further spread of HIV infection; and mitigate the impact of HIV and AIDS on the socioeconomic status of individuals, families, communities and the nation. The Policy expired in 2008 and has been revised since. The new Policy awaits Government endorsement and launching.

34. The new Policy is intended to promote evidence-based reprogramming and strengthening of the National HIV and AIDS response while recognizing emerging issues, gaps, challenges and lessons learnt over the duration of the first National HIV and AIDS Policy; scaling up of evidence-based innovative interventions; and re-alignment of the National HIV and AIDS Response to the current Government development agenda.

35. In terms of legislation, the Law Commission in 2007 constituted a special Law Commission to develop legislation on HIV and AIDS following a submission from the National AIDS Commission and the Department of Nutrition, HIV and AIDS. The

Commission decided to take a three-pronged approach comprising public health, human rights and criminal law in the exercise. The resultant report and proposed legislation, notwithstanding the debate that has ensued since the publication of the report, promotes largely a human rights approach to HIV and AIDS management and prevention. It was the view of the special Law Commission that all tools available should be deployed in order to combat the epidemic.

36. However, the proposed legislation does not, contrary to public debate, provide for mandatory testing. In fact, under the proposed law, compulsory testing is prohibited. Exceptions arise, for instance, with respect to pregnant women and their sexual partners; people intending to enter into polygamous unions; sexual offenders; and blood and tissue donors. In the case of uniformed services and domestic workers, pre-recruitment testing may be permissible under certain circumstances but this is neither compulsory nor mandatory. The proposed law also prohibits and criminally punishes discrimination on account of perceived or actual HIV status. The proposed legislation also seeks to provide for effective remedies, in line with the Constitution, for persons infected deliberately, negligently or recklessly with HIV. This is achieved by the imposition of criminal sanctions for such kind of infection. In the Commission's view, this provision is meant to complement other initiatives that are specifically meant to promote prevention of further HIV infection.

37. The report, which was completed in December 2008, is currently with Cabinet for consideration, before, if it so adopts, it is brought before Parliament, for enactment.

II. Constitutional, political and legal structure of Malawi

38. Malawi was, prior to attaining her political independence, known as Nyasaland, and was declared a British colonial protectorate in 1891. In 1953, Nyasaland became part of the Federation of Rhodesia and Nyasaland, which comprised the territories of Southern Rhodesia (Zimbabwe) and Northern Rhodesia (Zambia). The first wind of political change started around 1958, leading to a State of Emergency in 1959. The demands of the "natives", as the citizens were referred to then, was for the abolition of the Federation and for self-rule. The Federation ended on 31 December 1962, and Nyasaland attained self-government in 1963 with Dr. Hastings Kamuzu Banda as her first Prime Minister.

39. Nyasaland became the independent nation of Malawi on 6 July 1964 with the British Monarch retained as Head of State. Malawi became a full Republic in 1966 with Dr. Hastings Kamuzu Banda as her President.

40. When Nyasaland had attained independence, she adopted a Constitution which provided for a Bill of Rights. On becoming a Republic in 1966, a new Constitution was adopted which did not contain a Bill of Rights. Malawi also became a one-party State with the Malawi Congress Party as the sole legally recognizable party.

41. Having become a *de facto* one-party autocracy, and in the absence of a mechanism to monitor respect for and fulfilment of human rights, serious violations occurred against the population for almost thirty years. With the parliamentary system of government in place, in 1971, the President was made President for life.

42. The second wave of political change began in 1992 with a twofold agenda: to end the one party autocracy and to bring multiparty democracy to Malawi. The publication of a pastoral letter by Catholic Bishops entitled Living our Faith was quickly followed by the return of Mr. Chakufwa Chihana, who on arrival announced his intention to challenge the established autocracy. He was arrested on arrival and tried for sedition and imprisoned accordingly. As pressure mounted on Government to introduce political change, the

President announced a referendum where the question to be decided was whether Malawians wanted to continue under the one-party State or wanted political pluralism. By a majority of 67 per cent, the nation voted in favour of political pluralism on 14 June 1993.

43. The Malawi Congress Party Government accepted the result and started the process of transformation into pluralistic politics, which culminated in the First Multiparty General Elections in 1994. At the General Elections, the main parties contesting were Alliance for Democracy (Aford), with its stronghold in the Northern Region and led by Chakufwa Chihana; the Malawi Congress Party (MCP) led by the incumbent President, Dr. H. Kamuzu Banda with its stronghold in the Central region; and the United Democratic Front (UDF), which had a large following in the populous Southern region under the leadership of Mr. Elson Bakili Muluzi.

44. Mr. Bakili Muluzi and the UDF won a comfortable majority and formed a Government. The UDF won the subsequent two General Elections, first under Bakili Muluzi in 1999; and subsequently, after a failed bid to secure a third and open term, was replaced by Dr. Bingu wa Mutharika, of the same party, in 2004. Within a year of securing a third term, UDF was abandoned by Dr. Bingu wa Mutharika in February, 2005, citing corruption as the main reason for departure. Dr. wa Mutharika later formed the Democratic Progressive Party (DPP) and the UDF, by default, became an opposition party. In the fourth General Elections since 1994 (in 2009), the DPP secured a landslide majority with President Bingu wa Mutharika at its helm.

45. The 2009 election was the election of the first female Vice-President, Mrs. Joyce Banda, alongside President Mutharika. Within a year of the resounding victory, cracks began to emerge in the DPP as prominent party members began endorsing Professor Arthur Peter Mutharika, President Mutharika's brother, as the party's presidential candidate in 2014. The Vice-President, who refused to endorse the candidate, publicly seen as imposed, was expelled from the Party, alongside Mr. Khumbo Kachali, who was the DPP's Second Vice President. The two went ahead to form the People's Party (PP) amid difficulties in registering the party. Other senior members of the DPP that had not endorsed the President's brother or were seen as holding somewhat dissenting views from the Party were quickly expelled.

46. At this time, Malawi's relations with most of her neighbours and traditional donors began to sour. In 2011, Malawi expelled a British High Commissioner amid allegations arising from a leaked diplomatic cable that was seen as derogatory by the hosts. Increased fuel and forex shortage exacerbated the situation, leading to nationwide demonstrations on 20th July 2011 in which almost 20 people were killed.

47. On 5th April 2012, President Mutharika collapsed at State House in Lilongwe, was rushed to Lilongwe Central Hospital and eventually died by midday. He was later flown to South Africa, amid a tense atmosphere, where his death was not disclosed until 7th April. While it was rumoured that there were attempts to bypass the Constitutional requirement that the Vice-President should take over for the remainder of the term, the Vice-President, Mrs. Joyce Banda, was sworn in as the country's fourth, and first female, President on the evening of 7th April. She went on to nominate Mr. Khumbo Kachali as her Vice-President. Since her ascendancy to office, diplomatic relations with major donors have since been restored, the public media has been liberated to cover all manner of people with divergent political views and the fuel, forex and medicine shortage has diminished. On May 20, 2014, Malawi held her first ever tripartite elections, and Professor Arthur Peter Mutharika of the DPP won the Presidential elections and became Malawi's fifth President.

48. Since 1994, Malawi's political transformation has seen an increase in the number of political parties participating in General Elections and national politics generally. The Registration of Political Parties is done by the Registrar of Political Parties, under the office

of the Registrar General, which is an office under the Ministry of Justice and Constitutional Affairs. While registration has relatively been without controversy, a number of times, the decision of the Registrar of Political Parties has been challenged by applicants, leading to instances where the registration was concluded by a court.[3]

49. Other than parties which have been able to secure considerable numbers of seats in the National Assembly, there has been constant representation of minority parties with at the least one or two Members of Parliament. Some Members of Parliament have entered the National Assembly as Independent Candidates although, in some instances, these Independent Candidates have either re-joined parties they dumped or refused to represent earlier, or accepted appointments from Government side generally.

50. When the new Constitution was adopted in May 1994, it operated provisionally for one year. The provisional Constitution transformed completely relations between the individual and the State; and relations between State institutions. The former was accentuated by the adoption of principles of National Policy and a Bill of Rights, among other things while the latter was reinforced through the entrenchment of the doctrine of separation of powers between State organs – the Executive; the Legislature and the Judiciary. The system of Government moved from Parliamentary Supremacy to Constitutional Supremacy, which was provided for under section 5.[4]

51. The Constitution came definitely into force in May, 1995 and established the three organs of Government as follows:

(a) The Executive

52. Section 7 of the Constitution provides that the Executive shall be responsible for initiation of policies and legislation and implementation of all laws which embody the express wishes of the people of Malawi and promote the principles of the Constitution.

53. The President is responsible for providing executive leadership in the interest of national unity in accordance with the Constitution and the laws of the Republic as head of the Executive branch.[5] The President is also Head of State and Government and Commander-in-Chief of the Malawi Armed Forces. Under Section 88(1) of the Constitution, the President is responsible for the observance of the Constitution by the Executive arm of Government and, is also required to defend and uphold the Constitution as the supreme law of the land.

54. The Presidency consists of the offices of the President; Vice President and the Second Vice President. The Office of the President is established under Section 78 of the Constitution while that of the Vice President is established under Section 79. Section 79 of the Constitution requires the Vice President to assist the President and exercise the powers and perform the functions conferred on him or her, as the case may be, by the Constitution or by any Act of Parliament, and by the President. A member of the Presidency can hold office for a maximum of two consecutive five year terms.

55. Cabinet is established under Section 92(1) of the Constitution and consists of the Presidency and such Ministers and Deputy Ministers as may, from time to time, be appointed by the President.

---

[3] This was the case with the registration of the Peoples' Party, whose registration was contested by other political parties on account of similarities in name.

[4] Section 5 provides that "Any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid."

[5] See section 88(2) of the Constitution.

56. Cabinet is appointed to advise the President; to direct, co-ordinate and supervise the activities of Government departments, including parastatal bodies; to initiate Bills for submission to the National Assembly and to explain those Bills; to prepare, explain and formulate for the Parliament the budget of the State and its economic programmes; to be available to Parliament for the purposes of answering any queries or participating in any debate pertaining to the content of the policies of the Government; to assist the President in determining what international agreements are to be concluded or acceded to and to inform Parliament thereon; to take responsibility for the implementation and administration of laws; and to carry out such other functions reasonably necessary for the performance of their duties in accordance with the Constitution as may be prescribed by an Act of Parliament or the President.[6]

(b) The Legislature

57. The Legislature, in 1994, consisted of the President, the National Assembly and the Senate. The Senate was never established and was formally dissolved in 2001. The Legislature, presently, comprises the National Assembly and the President as Head of State.[7] The National Assembly comprises a 193-member Chamber with members directly elected by the people of Malawi in accordance with the Constitution and relevant electoral law. Under section 62 of the Constitution, the number of seats in the National Assembly represent every constituency in Malawi as determined by the Electoral Commission. Its function is to enact laws that reflect the deliberate interests of the people of Malawi and that further the values of the Constitution.[8]

58. Although the Constitution has not made it explicit, the National Assembly is headed by the Speaker, who has two deputies. The Speaker is elected by majority vote of members at the first sitting after every dissolution of the National Assembly. The office of the Speaker is independent and as such, is expected to discharge its functions and duties independent of the direction or interference of anybody or authority, expect in accordance with the provisions of the Standing Orders of the National Assembly. The Speaker's main function is to preside over every sitting of the National Assembly.

59. Parliament transacts its business through Motions and Bills. At least 90 percent of Government business (including legislative proposals) emanate from the Executive branch (public servants and Cabinet Ministers), who have direct responsibility for initiating new or reforming existing legislation. However, Members of Parliament do have an opportunity to influence legislation through debates, particularly in Parliamentary Committees, where Bills are sometimes referred to after the First Reading in the House. At the relevant Departmental Committee, any Member and other interest groups can make proposals for amendments for consideration by the House at the appropriate time. These proposals are supposed to be in line with the National Development agenda.

60. Parliament also has powers of oversight over public funds as empowered by the Constitution. This oversight function gives Parliament the power to regulate Government expenditure of public resources through the budgetary process, among other oversight roles, in holding the Government accountable for its policies and administrative practices regarding use of public funds in developing the nation.

61. Parliament, through its members who are elected representatives, is expected to maintain a close link with issues in their constituencies, provide leadership and take part in local events and official functions there. Members of Parliament are expected to motivate

[6] See section 96(1) of the Constitution.
[7] See section 49 of the Constitution.
[8] See section 8 of the Constitution.

their people to seek local solutions to certain issues while seeking complementary support from the State or other development stakeholders.

62. Parliament also has the duty to approve government expenditure annually. Members of Parliament have the responsibility to consider, debate and pass the financial estimates (budget) including taxation measures for raising revenue to finance public development programmers/projects presented by the Executive. This means that Parliament has a role in ensuring that sufficient resources are allocated to government departments in order to achieve good governance and national development.

(c) The Judiciary

63. Prior to 1994, there existed in Malawi a traditional courts system which ran parallel to the High Court structure. The traditional courts were established by statute, the Traditional Courts Act[9], which was not repealed after the adoption of the 1994 Constitution. However, the traditional courts remained suspended until the adoption of the Local Courts Act[10] in 2011. The suspension of the traditional courts in 1994 was largely based on section 103(3) of the Constitution which provides that "[t]here shall be no courts established of superior or concurrent jurisdiction with the Supreme Court of Appeal or High Court".

64. The role of the judiciary is to interpret, protect and enforce the Constitution and all laws in accordance with the Constitution in an independent and impartial manner having regard only to legally relevant facts and the prescriptions of law.[11]

65. The Judiciary is adequately empowered to uphold the supremacy of the Constitution, to enforce respect for human rights and to declare null and void legislation and other governmental actions which are contrary to the Constitution. To effectively carry out this mandate, the courts have to be vigilant and bold. In the words of Kapanda J in *Jumbe and Mvula v. Attorney General* (Constitutional Cases 1 and 2 of 2005): "Unless the courts maintain their vigilance the state will not be stopped in its adventure of trampling on people's rights."

66. The judiciary comprises, in order of precedence, of the Supreme Court of Appeal, the High Court and subordinate courts, namely the Industrial Relations Court, Magistrate Courts and Local Courts.

67. The Supreme Court of Appeal, as established under section 104 of the Constitution, is the highest appellate court in Malawi and has no original jurisdiction in any matter. The Supreme Court of Appeal is a superior court of record and may exercise any powers conferred on it by the Constitution or any other law. Appeals lie to the Supreme Court of Appeal from the High Court or any tribunal prescribed by an Act of Parliament.

68. The Judiciary is administratively divided into registries at High Court level and for courts subordinate thereto. The Principal Registry of the High Court is in Blantyre in the Southern region. The Zomba District Registry in the Eastern region, Lilongwe District Registry in the Central region, and Mzuzu District Registry in the Northern region complement the structure. Each High Court Registry is headed by the most Senior Judge known as Judge President.

69. The High Court, on the other hand, has unlimited original jurisdiction to hear and determine any civil or criminal matter under any law.[12]

---

[9] Cap. 3.03.
[10] Act No. 9 of 2011.
[11] See section 9 of the Constitution.

70. Beyond the dual original and appellate jurisdiction of the High Court, the High Court also exercises general supervisory powers over subordinate courts and can review decisions of Magistrate courts at any stage of proceedings in the lower court. In addition the court is required to confirm decisions of magistrate courts in exercise of the courts supervisory powers. Of late, the High Court has, over and above the General Division, established through legislation the Commercial Division, which exclusively deals with commercial matters, and the Constitutional Division, which presides over disputes of a constitutional nature.

71. Section 110(1) of the Constitution permits the existence of courts subordinate to the High Court if prescribed by an Act of Parliament. The Magistrate's courts may be presided over by professional or lay magistrates.

72. Section 110(2) of the Constitution provides for the creation of the Industrial Relations Court, subordinate to the High Court, which shall have original jurisdiction over labour disputes and such other issues relating to employment.

73. The Local Courts Act establishes Local Courts with a jurisdiction to preside over minor criminal cases. These courts established under the authority of the Constitution are intended to improve access to justice, in terms of primary justice, as they shall be easily accessible to people in rural areas.

74. While the Constitution posits that it is the supreme law of Malawi, the legislative architecture places under it Acts of Parliament, subsidiary legislation, international instruments and customary laws. Subsidiary legislation may be made by or under the authority of the National Assembly. International instruments, whether binding or otherwise, do not form part of the justiciable national legislative structure unless so provided by statute. In this regard, Malawi is a dualist State. Customary laws are not uniform in Malawi due to the existence of various ethnic groups in the country. However, customary law is recognized as such, and legislation does, in some instances, acknowledge its existence and efficacy.

75. Under the legislative framework, Government operates an elaborate policy framework under the overarching blueprint, the Malawi Growth and Development Strategy (MGDS) II. Under the MGDS, Government has several sectoral policies in areas such as HIV and AIDS; gender; sexual and reproductive health rights; social support; education; land; water; children; and agriculture.

III. General framework for the protection and promotion of human rights

A. General framework

76. The general framework for human rights is guided by the Constitution. The Constitution, where the bulk of specific rights is contained, provided for a model which comprises the institutional and enforcement framework; *locus standi*; specific rights; limitations and restrictions; and derogation from rights. Arguably, the Constitution also provides for non-justiciable rights, termed principles of national policy which have been described in the Constitution, as "directory in nature" but the courts are entitled to have recourse to them in interpreting and applying any provision of the Constitution or law in

[12] See section 108(1) of the Constitution.

determining the validity of decisions of the Executive branch and in the interpretation of the Constitution.

77. Under the institutional and enforcement framework, a number of institutions have been mentioned, such as the courts; the Ombudsman; the Human Rights Commission and other organs of Government. To this end, institutions such as the Law Commission, which is mandated to review and reform all laws, including the Constitution, have a role to play in promoting and protecting human rights. Since the Constitution renders discriminatory practices and their propagation criminally punishable, institutions such as the Police and the Prisons have a role to play in the human rights framework. The roles of these institutions go beyond this.

78. While the regime under the Constitution is restrictive in terms of standing in order to promote, protect and enforce human rights, the courts have gradually been relaxing the rule requiring "sufficient interest" for applicants who seek to enforce rights or prosecute violations of those rights.

79. In terms of specific rights under the Constitution, the Constitution has provided for some rights in an unjusticiable fashion under section 13. These include gender equality; nutrition; environment; education; the elderly; and peaceful settlement of disputes. Some of these principles have been expressly provided for as rights, such as gender equality; children; and education. In all cases of principles of national policy, the State is the ultimate duty bearer. Under the Bill of Rights (Chapter IV), there are civil and political rights as well as economic, social and cultural rights.

80. The Bill of Rights also operates within an international human rights framework fraught with several instruments at international, continental and regional levels. The major international human rights instruments include the Universal Declaration on Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the African Charter on Human and Peoples' Rights; and the Southern African Development Community (SADC) Protocol on Gender and Development, at various levels. However, the operation of, and accessibility to, the international instruments is possible only in accordance with the Constitution. As such, unless the international instrument is provided for by statute, it cannot be invoked in local courts.

81. The enjoyment of rights is not absolute in all cases or with respect to all rights. The Constitution sets out strict conditions for the limitation or restrictions for rights enshrined under the Constitution when the restriction or limitation is prescribed by law of general application; is reasonable; does not negate the essential content of the right; is recognized by international human rights standards; and is necessary in an open and democratic society.

82. The Constitution, in line with prominent international human rights instruments, permits derogation during a state of emergency with respect to some specified rights, such as freedom of expression, freedom of information, freedom of movement, freedom of assembly. The right to be promptly brought before a court of law, and not to be detained without trial, is also subject to derogation. Such derogation, however, has to be consistent with Malawi's obligations under international law. In addition, all derogation measures, such as the detention of suspects without trial are subject to applications and challenges in the High Court.

B. Universal periodic review

83. Malawi underwent the universal periodic review process of the United Nations Human Rights Council in 2010. A National Task Force was established to coordinate the

drafting process. The members of the Task Force included Ministry of Justice as chair, Ministry of Foreign Affairs, Office of the President and Cabinet, Ministry of Internal Security, Ministry of Education, Ministry of Information, Ministry of Labour, Ministry of Finance, Ministry of Health, The Law Commission, Human Rights Commission, the Ombudsman, National Assembly, civil society. The National Task Force will develop an Implementation Plan as Malawi prepares to submit a midterm progress report in November 2012.

C. International human rights instruments and treaty domestication

84. Malawi attaches great importance to the promotion and protection of human rights as universally shared principles and norms enshrined under the United Nations Charter, the Universal Declaration of Human Rights and other relevant human rights instruments. All international agreements entered into by Malawi before 1994 are part of the law of Malawi. International instruments ratified by Malawi after 1994 become part of the laws of Malawi only through an Act of Parliament. Appendix 2 shows some of the international human rights and international humanitarian instruments to which Malawi is a party.

D. The Judiciary

85. When called upon to interpret the provisions of the constitution, the courts of Malawi under section 11 shall have regard to current norms of public international law and comparable foreign case law. Commenting on the domestic application of current norms of public international law and comparable foreign case law, the Malawi Supreme Court of Appeal has said:

> Section 11 of the Constitution expressly empowers this Court to develop principles of interpretation to be applied in interpreting the Constitution. The principles that we develop must promote the values which underlie an open and democratic society, we must take full account of the provisions of the fundamental constitutional principles and the provision on human rights. We are also expressly enjoined by the Constitution that where applicable we must have regard to current norms of public international law and comparable foreign case law. We are aware that the principles of interpretation that we develop must be appropriate to the unique and supreme character of the Constitution. The Malawi Constitution is the supreme law of the country. We believe that the principles of interpretation that we develop must reinforce this fundamental character of the Constitution and promote the values of an open and democratic society which underpin the whole constitutional framework of Malawi. It is clear to us therefore that it is to the whole Constitution that we must look for guidance to discover how the framers of the Constitution intended to effectuate the general purpose of the Constitution. There is no doubt that the general purpose of the Constitution was to create a democratic framework where people would freely participate in the election of their government. It creates an open and democratic society.

86. The Judiciary in Malawi therefore is sufficiently empowered to apply international human rights standards.

87. The Constitution has established several independent human rights institutions charged with the task of promoting, protecting and monitoring the enjoyment of human rights and freedoms. These include the Human Rights Commission, the Ombudsman and the Law Commission.

E. Human Rights Commission (HRC)

88. The Human Rights Commission (HRC) is an independent body established under section 129 of the Constitution, mandated to investigate and make recommendations reasonably necessary for the effective promotion of human rights. The Commission has the power to study legislation, judicial decisions, administrative provisions, Bills and administrative proposals, to ensure that they are in conformity with fundamental principles of human rights. In exercising this mandate, the Commission receives complaints and conducts investigations and hearings in cases of human rights abuses.

F. The Ombudsman

89. The Office of the Ombudsman is established under section 120 of the Constitution. It is independent of the interference or direction of any person and is answerable to Parliament. It has the powers to investigate any case where it is alleged that a person suffered injustice and it does not appear that there is any remedy available by way of proceedings in court, by way of appeal from a court or where there is no other practicable remedy. The powers of the Ombudsman do not oust the jurisdiction of the court and his decisions are subject to review by the High court. For the first time in the history of the country, a female Ombudsman was appointed in 2010.

G. Law Commission

90. The Law Commission, established under Chapter XII of the Constitution and its enabling statute, the Law Commission Act (Cap. 3:09), commenced its operations upon the appointment of the first Law Commissioner in 1996. Its functions, under the Constitution, are to review and make recommendations regarding any matter pertaining to the laws of Malawi and their conformity with the Constitution and applicable international laws; review and make recommendations regarding any matter pertaining to the Constitution; review any submissions from any person or body regarding the laws of Malawi or the Constitution; and report its findings and recommendations to Parliament through the Minister of Justice.

91. Under section 6 of the Law Commission Act, the Commission is mandated, in addition to the constitutional functions, to review the laws of Malawi with a view to the systematic development and reform of the law, including, in particular:

(a) The modernization of the laws by bringing them into accord with current national and international conditions and norms;

(b) The elimination from the laws of any defects, whether of a procedural, substantive or policy nature;

(c) The simplification of the laws;

(d) The recommendation of new or more effective methods and procedures for the administration of the laws;

(e) To make recommendations for the fusion or harmonization of customary law with other laws of Malawi;

(f) To make recommendations for the codification of any branch of the law or of any customary law; and to promote awareness of the laws and the Constitution by the public and by departments of the Government and other authorities or bodies.

92. The Commission Secretariat comprises a Law Commissioner, as the executive head of the institution, and other officers subordinate to the Law Commissioner. The Law Commissioner is appointed by the President on the recommendation of the Judicial Service Commission for a renewable term of five years. Other officers of the Commission are appointed by the Commission and are deemed officers in the public service.

93. The Commission has two main divisions: the Law Reform Division and the Corporate Services Division. The core business of the institution is law reform, which involves legal research, law development, law review, legislative drafting and civic education. The Corporate Services Division provides support services in general administration and human resource management.

94. Under the Law Commission Act, the Commission, from time to time, prepares a list of programmes of its work for any specified period not exceeding a calendar year, in which matters that require consideration are included in order of priority.

95. The Law Commission, in consultation with the Judicial Service Commission, from time to time, appoints Commissioners to serve on special Law Commissions where the review process is conducted in plenary and through legal research, investigations and consultations. The special Law Commission then prepares a Report for publication. The Report sets out the problem areas, the status of the law in Malawi including international instruments and the special Law Commission's findings and recommendations for reform, taking into account its own research findings, submissions received from stakeholders, relevant government policies, and legislative trends in comparable foreign and regional jurisdictions.

96. The Report containing a proposed legislation (a Bill) is submitted to the Minister of Justice for its publication in the *Gazette* under the Minister's hand and the published Report is laid in Parliament by the Minister. The Minister also submits the Report to Cabinet and if Cabinet adopts the recommendations of the Commission, the proposed legislation is adopted as a Government Bill and presented before Parliament for enactment.

97. Law reform programmes of the Law Commission since its inception in 1996 have been computed and are listed in appendix 1 attached hereto.

98. Under the 2012 Programme of Work for the Law Commission, the Commission shall undertake the Review of Certain Laws of Concern, which includes section 35 of the Police Act; section 10 of the Civil Procedure (Suits by or Against the Government) Act; the Local Courts Act; and sections 137A, 153 to 156 of the Penal Code in line with the concerns that were raised regarding these provisions by different sections of society. The Commission intends to conduct a thorough reform process and make recommendations accordingly with respect to the said provisions and legislation. In the same Programme of Work, the Law Commission shall also review the Prisons Act per submission from the Department of Prisons.

H. Electoral Commission

99. The Electoral Commission (EC) is established under section 75(1) of the Constitution as a body responsible for the conduct of elections in Malawi. The Chairperson of the Commission is a judge nominated by the Judicial Service Commission. Section 76(2) of the Constitution spells out the functions of the Commission as the determination of constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register; to review existing constituency boundaries at intervals of not more than five years to determine electoral petitions and complaints related to the conduct of any elections; to ensure compliance with the provisions

of this Constitution and any other Act of Parliament; and to perform such other functions as may be prescribed by the Constitution or an Act of Parliament.

100. Malawi has had four Parliamentary and Presidential Elections since 1994. While the elections have generally been deemed free and fair, there remain challenges about the conduct of elections, such as the capacity of the Electoral Commission, the independence of the Commission, conduct of public broadcasters, and abuse of public resources during campaign.

I. Prison Service

101. The Constitution provides for the Prisons Service in Section 163, the Office of the Chief Commissioner of Prisons in Section 164, and the Prison Service Commission and the Inspectorate of Prisons in Sections 167 and 169 respectively. The Service is headed by a Chief Commissioner who is tasked to ensure proper and efficient administration of prisons, protection of human rights, respect for judicial orders and directions and adherence to international standards.

102. According to Section 8 of the Prison Act, the Malawi Prison Service consists of all penal institutions, labour camps, special and secure schools and other institutions that are used to house, detain and rehabilitate persons sentenced to imprisonment in whatever form such imprisonment may take, but shall not include holding cells in police stations. The Prisons Act was enacted in 1955 and is in much need of total overhaul. The Act provides for the administration and structure of the Prison Service.

103. The Service has its headquarters in Zomba, with regional offices headed by Regional Commissioners in South, Centre and the North. Every prison is headed by an Officer in Charge who is the supervisor and controller of both prison officers and prisoners. He is assisted by prison officers who are tasked with various duties. The Prison Service Commission and the Inspectorate of Prisons provide oversight over the running of prisons. The main responsibility of the Chief Commissioner for prisons is to ensure the proper and efficient administration of the penal institutions that comprise the Malawi Prison service. According to Section 2 of the Prisons Act, a prisoner means any person, whether convicted or not, under detention in any prison. An unconvicted prisoner means any person, not being a convicted prisoner, duly committed to custody under a writ, warrant or order of any court, or any order of detention issued by any person authorised thereto by any law, or by order of a court-martial.

104. The challenges faced by the Prison Service are many, chief among them is capacity. In 2010 the existing prison staff totalled 1,109. Of these 886 were males and 223 were females. The warder prisoner ratio is an important indicator. In 2005 the warder-prisoner ratio was 1:16. During the 2010 baseline survey the findings show that the warder prisoner ratio is 1:11. According to gender the warder to prisoner population ratio is better for females at 1:1.4 compared to males 1:13. There are thirty two (32) prisons in Malawi, most of them built before Malawi's independence. Table 3 below shows data in relation to prison, prison personnel and number of prisoners between 2006 and 2010.

Table 3
Number of prisons, prison personnel and prisoners 2006–2010

Indicator	*Unit*	*2006*	*2007*	*2008*	*2009*	*2010*
Number of Prisons, correctional institutions	Number	32	32	32	32	32
Number of prison personnel	Total	763	791	855	1,002	1,109

Indicator	*Unit*	*2006*	*2007*	*2008*	*2009*	*2010*
	Male	623	630	689	812	886
	Female	140	161	166	190	223
Number of inmates incarcerated	Sentenced	9,004	9,382	9,567	9,511	11,050
	Awaiting trial	3,087	3,255	3,550	3,787	3,424
Number of convicted prisoners	Total	10,078	10,368	10,691	11,722	11,864
	Male	9,912	10,187	10,481	11,452	11,558
	Female	166	181	210	270	306
Prison Warder: Prisoner Population ratio	Total	13.2	13.1	12.5	11.7	10.7
	Male	15.9	16.2	15.2	14.1	13.0
	Female	1.2	1.1	1.3	1.4	1.4

Source: Prisons Department, 2011

105. A major problem in Malawi prisons is overcrowding. In its 2010 Annual Human Rights Report, Amnesty International summarized the general conditions in Malawi prisons as:

> Overcrowded with most cells holding more than twice their capacity. In December, for example, Maula Prison (Central region), built for 700 prisoners, housed about 2,200; Zomba Prison (Southern region), built for 900 inmates, housed 2,176; Chichiri Prison in Blantyre, built for 700 prisoners, housed 1,800; and Mzuzu Prison (Northern region), built for 200 inmates, housed 412. The overcrowding resulted in the spread of contagious diseases, including tuberculosis and scabies.

106. In response, government has taken measures which include a draft Prison Bill to replace the current Prison Act and has embarked on programmes toward general improvement of prison conditions. A model prison was built in Mzimba in northern Malawi. There are also plans to build new high security prisons in Lilongwe and Blantyre to replace Maula and Chichiri Prisons, which are old.

J. Malawi Police Service

107. The Malawi Police Service is established under section 152 of the Constitution as an independent organ of the executive charged with the responsibility of providing protection of public safety and the rights of persons in Malawi in line with the Constitution and any written law in Malawi. The Police are under the political responsibility of the Minister of Internal Security and Public Safety and is headed by the Inspector General appointed by the President with approval of Parliament under Section 154(2). The organization and structure of the Service for operational purposes are as follows:

(a) National Police Headquarters;

(b) Regions;

(c) Stations;

(d) Sub Stations;

(e) Posts;

(f) Units.

108. The Service has a national headquarters in Lilongwe with four regional offices in the South, East, Central and North. Each region is headed by a Commissioner. Presently there are a total of thirty four police stations across the country. Each Police Station is administratively headed by an Officer in Charge and assisted by a Station Officer who deals with day to day operations such as handling crime reports. The core functions of the Malawi Police Service provided for under Section 4(1) of the Police Act 2010 are the prevention, investigation and detection of crime, the apprehension and prosecution of offenders, the preservation of law and order, the protection of life, property, fundamental freedoms and the rights of individuals, and the due enforcement of all laws with which the Police are directly charged.

109. It is important to emphasize that the Police Service exists to protect the lives of the people of Malawi and to ensure their full enjoyment of their rights. The Service therefore is not a tool of oppression. Throughout Malawi's young history, challenges have been faced to ensure a professional and competent Police Service. While the 1994 Constitution clearly spells out the functions of the Service, gaps have existed between the ideals enshrined in the law and the practical reality on the ground. The enactment of the Police Act in 2010 sought to address such gaps with radical changes.

110. The Act establishes the Office of an Independent Complaints Commission to investigate complaints of brutality, deaths or misconduct at the hands of the police. The Commission is yet to be established. The Act also creates a Lay Visitors Scheme, which is a team of local people at every police station mandated to inspect conditions of detention at police stations. In addition, the Act comprehensively provides for the conduct and regulation of public assemblies, demonstrations and crowd control at football matches.

111. Many challenges remain, chief among them the lack of resources and capacity.The findings of the 2010 Malawi Justice Baseline Survey show that the police population ratio in Malawi is still higher, more than 1,000 persons per police officer. In the year 2010 the police population ratio was 1: 1,450 against the recommended target of 1:500. The situation is worse in the rural areas 1: 6,455 compared to the urban where the ratio is 1:266.

K. Ministry of Gender, Children and Social Welfare

112. The MGCSW is the engine behind the Government machinery for implementing gender and children affairs. It is also the Ministry responsible for implementing the CEDAW on behalf of Government. The MGCSW has presence virtually in all the districts in Malawi. Since it handles and has a department responsible for children affairs, it is also responsible for the Convention on the Rights of the Child. The MGCSW has been instrumental in the establishment of Gender Focal Points in other ministries and departments and this has increased its visibility generally in the public sector. From the time of its establishment, the Ministry of Gender has always been headed by a female Minister. Currently, the Principal Secretary is a woman who took over from a man. It is worth noting that the Director of Gender Affairs is male.

L. Ministry of Justice and Constitutional Affairs

113. The Ministry of Justice and Constitutional Affairs plays a significant role in the area of human rights and the rule of law in Malawi. The Ministry has recently established a Human Rights Unit, which will be coordinating issues of human rights and State party reporting. The Unit is however understaffed and lacks capacity. The Directorate of Public Prosecutions is responsible for all criminal prosecutions in Malawi and is a department

within the Ministry of Justice. The mandate of the DPP is provided by the Constitution in sections 99-102 with powers to institute, take over, discontinue and supervise criminal proceedings. The Director is appointed by the President with the approval of the Public Appointments Committee of Parliament. The D'PP's office has a duty to ensure that suspects in criminal cases enjoy their constitutional rights. This includes trial within a reasonable time. Due to resource constraints this has been a major challenge especially in serious cases such as homicides. In the last few years some progress has been made with the establishment of the Homicide Working Group made of key players in the Criminal Justice Sector. As a result, since 2009 1272 homicide cases have been disposed of.

114. **The Legal Aid Department** has traditionally been part of the Ministry of Justice as a department tasked with the responsibility of legal aid to Malawians. The enactment of the Legal Aid Act in early 2011 has revolutionised the legal and structural setup of legal aid services in Malawi with the establishment of the Legal Aid Bureau as a separate entity outside Ministry of Justice. The Legal Aid Bureau once established will perform its functions and duties independent of any person or authority. The Bureau will be headed by a Director and assisted by a Deputy Director. The establishment of the Bureau is geared to address the huge gap of provision of legal aid services experienced in Malawi mainly in terms of accessibility by those mostly in need of such services. In view of that, the operations of the Bureau shall be decentralized with the establishment of Legal Aid centres across the country, as opposed to the present situation, where the Legal Aid Department has offices in the urban centres of Blantyre, Lilongwe and Mzuzu only.

115. Section 4 of the Act provides for the duties and functions of the Bureau as being the provision of legal aid, liaison and cooperation with civil society organizations and other bodies in the provision of legal aid, undertaking research in the aspects of legal aid, preparation of reports and recommendations to the Minister.

116. Legal aid has been broadly defined as legal advice, legal assistance, representation in any court, tribunal or similar body or authority and the provision of civic education and information about the law. The mandate of the Bureau is broad, particularly with inclusion of provision of civic education and information about the law as part of legal aid services. The Bureau is also expected to open more offices across the country, thereby making legal aid more accessible. Section 28 of the Act permits the Bureau to enter into what are called cooperation agreements with civil society organizations in the provision of legal aid. This is significant, considering the pronounced presence in the justice system of civil society organizations. While the role of civil society has previously been felt and noted, the specific provision for cooperation between the Bureau and civil society organizations gives such organization first legal recognition in the criminal justice system.

117. **The office of the Administrator General** is incorporated under statute. Operationally, it falls under the Ministry of Justice. It is responsible for the administration of deceased estates of persons dying intestate. The other legislation guiding the office other than the Administrator General Act are the Estate Duty Act and the Deceased Estates (Wills, Inheritance and Protection) Act.

118. In spite of the establishment and textual mandate, the office has numerous challenges which result in delays in discharging their duties. Previously and up to 2011, the Department was headquartered in Blantyre, which is in the southern region of Malawi, a fact which gave rise to serious challenges of access for beneficiaries. Often widows would travel to Blantyre to access the death benefits of their deceased spouses only to be confronted with delays that would lead to depletion of their upkeep money, leaving them destitute. Lack of computerization of records also led to numerous cases of loss of data which jeopardized the chances of people accessing the death benefits timely.

119. These challenges, according to the Administrator General, are being met and resolved. Since the office moved to Lilongwe, access has improved for people from the extreme ends of the country. More offices have been opened at regional level, thereby offering relief to the bereaved. The office is also making efforts to computerize their records so that cases of missing data and files are reduced if not eliminated.

M. Civil society

120. Malawi has a thriving civil society community with a growing influence in successive years. The operations of civil society organisations, well known as Non-Governmental Organizations (NGOs) are regulated by the Non-Governmental Organizations Act (Chapter 5:05 of the Laws of Malawi, [hereinafter referred to as the NGO Act]. The NGO Act applies to institutions or organizations constituted for public benefit purposes and this expressly exclude churches, religious organizations, political parties, trade unions or social clubs. The Act as a regulatory framework of NGOs seeks to promote the development and values of a strong, independent civil society. The Act is based on three key components of an NGO regulatory system. These are registration, monitoring and identifying and dealing with misuse. Sections 20 to 24 in Part VI of the NGO Act deal with the registration of NGOs in Malawi. The requirements for registration under the Act are: governing instrument of the NGO, plan of activities of the NGO, source of funding, latest available audited annual financial statements, proof that the NGO is a member of the Council for Non Governmental Organisations in Malawi (CONGOMA) which is an umbrella group for all NGOs in Malawi. For monitoring and detection of abuse, the law requires NGOs to report to the NGO Board on their activities, present annual audited financial records, disclose sources of funding, and present their annual activities undertaken.

N. Anti-Corruption Bureau

121. In its efforts to fight corruption, the Government set up the Anti-Corruption Bureau in 1998, which is an independent organ of the State. It has the mandate to investigate and prosecute corruption, abuse of office and other criminal cases related to corruption. In 2005 the Government declared a Zero Tolerance Policy against Corruption. Table 4 below shows the number of corruption cases handled by the Anti-Corruption Bureau since 2005.

Table 4
Number of cases handled by the ACB 2005 to 2011

	2005	*2006*	*2006*	*2007*	*2007*	*2008*	*2008*	*2009*	*2009*	*2010*	*2010*	*2011*	***Totals***
Complaints received	1,008		795		938		1,553		2,104		1,961		**8,359**
Complaints authorized for investigations	175		301		134		304		351		251		**1,516**
Complaints Awaiting Action	56		42		333		834		1,225		1,293		**3,673**
Investigations completed	255		246		276		480		634		463		**2,354**
Cases closed/review	1,024		nil		nil		nil		nil		219		**1,243**
Cases referred to Prosecution	82		68		95		128		152		153		**678**
Cases closed including after legal opinion	168		178		198		352		482		310		**1,688**
Cases for administrative action	5		nil		nil		nil		nil		nil		**5**
Cases referred to the Director of Public Prosecutions	nil		nil		nil		nil		nil		nil		**0**

	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	Totals
Completed Prosecutions	22	16	21	20	25	34	**138**
Convictions	15	10	9	9	10	23	**76**
Acquittals	5	5	8	7	12	4	**41**
Withdrawals/discharges	2	1	4	4	3	10	**24**

Source: Anti-Corruption Bureau, 2012

122. The numbers of completed investigations include Corruption Prevention Inquiries. The number of completed investigations exceeds cases authorized because of matters carried forward from previous years. The proportion of completed investigation referred to prosecution continues to increase. There are currently over 70 cases in the Court System.

IV. Equality, non-discrimination and effective remedies

A. Equality and non-discrimination

123. The principle of equality and non-discrimination is one of the bedrocks of the Constitution of the Republic of Malawi. Section 4 of the Constitution provides that the Constitution shall bind all executive, legislative and judicial organs of the State at all levels of Government and that all the peoples of Malawi are entitled to the equal protection of the Constitution and laws made under it.

124. Further, section 20 guarantees the equality of all persons before the law and equal protection without any form of discrimination. It also prohibits discrimination of persons in any form and guarantees all persons, under any law, equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status. Section 20 further provides that legislation may be passed addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts.

125. Section 41(1) of the Constitution states that every person has a right to recognition as a person before the law. The rights to equality and equal recognition before the law cannot be limited, restricted or derogated from.

126. The Constitution also singles out gender-related equality and non-discrimination. Under the Principles of National Policy enshrined under Section 13 of the Constitution, the State is required to actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving gender equality for women with men.

127. Section 20 has identified sex as a ground under which discrimination is prohibited, while section 24 on the rights of women identifies two further grounds: marital status and gender.

128. In relation to persons with disabilities, there is equal protection under section 20 of the Constitution. In addition section 13 states that the Government shall implement policies to ensure they have adequate and suitable access to public places, fair opportunity in employment and full participation in all spheres of Malawian life. In 2009, Malawi ratified the Convention on the Rights of Persons with Disabilities. In 2010, the Constitution was amended to add a further commitment and undertaking by the State that Government shall enhance the dignity and quality of life of persons with disabilities by providing, among

other things, adequate and suitable access to public places. Under the same amendment, section 23 on rights of children was amended to recognize children with disabilities as children in situations of special disadvantage and as such, where appropriate, entitled to State assistance.

129. A Disabilities Bill which has for years been pending with Cabinet was in May 2012 passed into law. The law, with the support of the Constitutional framework explained above, shall enhance the promotion and respect for rights of people with disabilities.

130. While the constitutional framework on equality and non-discrimination is solid, issues of inequality and discrimination in Malawi still persist, especially against vulnerable groups such as women, children. There are laws, policies and programmes that have been adopted by the Malawi Government aimed at addressing inequalities and to actively promote non-discrimination. The following are a few examples;

(a) Prevention of Domestic Violence Act – 2006;

(b) Deceased Estates (Wills, Inheritance and Protection) Act – 2011;

(c) Review of discriminatory laws on marriage and divorce resulting in the draft Marriage, Divorce and Family Relations Bill – 2006;

(d) The National Policy on Orphans and other Vulnerable Children (OVC) is facilitating support for care, protection and development of OVC's in a coordinated manner in order to provide them with an environment in which they realise their full rights and potential – 2009;

(e) The Ministry of Education's Accelerated Girls' Education Programme, whereby school infrastructure is improved with sufficient sanitary facilities in order to make them more accommodating to female needs;

(f) Positive discrimination or affirmative action is being done in allocating bursaries to needy pupils. The ratio is currently in favour of girls, in order to address the inequality of access to education, which was in favour of male as opposed to female children;

(g) There is also a Re-admission Programme for young mothers to provide them with an equal right to education despite being mothers before the completion of their education;

(h) The Ministry of Education is also making a deliberate effort to ensure an equal selection rate for girls and boys from primary to secondary schools which was hitherto not the case;

(i) The Education Policy Investment Framework, which is the national education strategic framework, ensures the promotion of educational equity by making an inclusive environment supportive of the needs of boys and girls as well as children with special needs and severe disabilities;

(j) The newly implemented quota system of selecting students for entry into the University of Malawi is a deliberate policy meant to address existing inequalities/disparities in access to University education;

(k) The provision of subsidized farm input such as fertilizer to the elderly, the very poor, the disabled, and other socially disadvantaged groups is also meant to address the issue of lack of equal access to resources for farming and hence food.

131. Currently, Malawi is also in the process of enacting the Gender Equality Bill which aims at, among other things, eliminating detrimental cultural practices, to protect children,

especially the girl child, from cultural practices that are discriminatory and harmful to the physical and psychological development of the child.

132. Malawi also ratified the International Convention against Racial Discrimination and the Convention on Elimination of Discrimination against Women. In light of the disparities that exist between what is contained in the Constitution, applicable international instruments and what is on the ground, the Government, through recommendations of the Law Commission, is introducing a law that prohibits harmful practices (whether social, cultural or religious) that perpetuate the subservience of women and which invoke exploitative sexual relations. It recommends the introduction of a quota capped at a minimum of 40% and at a maximum of 60% in employment, education and public office.

B. Effective remedies

133. The Constitution of Malawi provides a framework for redress where there are violations of rights and freedoms. Section 15(1) of the Constitution states that all three arms and organs of Government shall respect and uphold all the rights and freedoms enshrined in the Constitution. The Constitution provides for effective remedies where there has been violation of rights or where there is a threat to the enjoyment of such rights.

134. These remedies are available through the courts, the Human Rights Commission, the Ombudsman and other organs of Government. Section 41(3) of the Constitution makes it possible that any infringement of a right (enshrined by the Constitution or law) or indeed a mere threat to the enjoyment of any right can be effectively addressed.

135. The Constitution has already provided that criminal sanctions may be imposed for violation of certain rights such as discrimination under section 20. In this light, criminal sanctions should be seen as a form of remedy available under human rights protection.

136. Section 43 of the Constitution provides for the right to fair administrative justice. Decisions of government are subject to judicial review and the courts have powers to grant effective remedies where there has been violation of rights.

137. For example, Claimants have been able to sue for damages in numerous cases where they have been falsely imprisoned as was the case in the case of *Martin Machipisa Munthali v. Attorney General*, (Civil Cause No. 52 of 1993) where the Claimant was awarded damages after having been falsely imprisoned for 27 years. In the case of *Felix Katha* v. *Attorney General* (Civil Cause No. 988 of 2007) the Claimant was also awarded damages for having been falsely imprisoned for 2 months.

Appendix I

[English only]

Status of Law Reform of Programmes in Malawi (1996–2011)

No.	Report title	Year of publication	Proposed legislation	Status
1.	Review of certain laws on Defilement of young girls, Wills and Inheritance, Citizenship, Marriage and Affiliation	October, 1996	(1) Penal Code (Amendment) Bill	Enacted in 1997 and 1998
			(2) Wills and Inheritance (Amendment) Bill	Enacted in 1997 and 1998
			(3) Citizenship (Amendment) Bill	Enacted in 1997 and 1998
			(4) Marriage (Amendment) Bill	Enacted in 1997 and 1998
			(5) Affiliation Act (Amendment) Bill	Enacted in 1997 and 1998
2.	Technical Review of the Constitution	November, 1998	Constitution (Amendment) Bill	Enacted as Act No. 11 of 2010
3.	Criminal Justice Reform on Bail Guidelines	February, 2000	Bail (Guidelines) Bill	Enacted as Act No. 14 of 2000
4.	Review of the Penal Code	June, 2000	Penal Code (Amendment) Bill	Enacted as Act No. 1 of 2011
5.	Review of the Army Act	July, 2001	Defence Forces Bill	Enacted as Act No. 11 of 2004
6.	Review of Censorship and Control of Entertainment Act	August, 2001	Classification of Public Entertainment and Publications Bill	Before Cabinet
7.	Review of the Legal Education and Legal Practitioners Act	September, 2002	Legal Education and Legal Practitioners (Amendment) Bill	Enacted as Act No. 9 of 2004
8.	Review of the Corrupt Practices Act	November, 2002	Corrupt Practices (Amendment) Bill	Enacted as Act No. 17 of 2004
9.	Review of the Police Act	July, 2003	Police Bill	Enacted as Act No. 12 of 2010
10.	Review of the Criminal Procedure and Evidence Code	December, 2003	Criminal Procedure and Evidence Code (Amendment) Bill	Enacted as Act No. 14 of 2010
11.	Criminal Justice Reform on Conversion of Fines	December, 2003	Fines (Conversion) Bill	Enacted as Act No. 10 of 2005

No.	Report title	Year of publication	Proposed legislation	Status
12.	Review of the Wills and Inheritance Act	January, 2004	(1) Deceased Estates, (Wills, Inheritance, and Protection) Bill	Enacted as Act No. 14 of 2011
			(2) Estate duty (Amendment) Bill	
13.	Review of the Legal Aid Act	July, 2005	Legal Aid Bill	Enacted as Act No. 7 of 2011
14.	Review of Children and Young Persons Act	October, 2005	Child Care, Protection and Justice Bill	Enacted as Act No. 22 of 2010
15.	Review of the Land Related Laws	March, 2010	(1) Land Bill	Before cabinet
			(2) Customary Land Bill	
			(3) Registered Land (Amendment) Bill	
			(4) Physical Planning Bill	
			(5) Forestry (Amendment) Bill	
			(6) Public Roads (Amendment) Bill	
			(7) Mines & Minerals (Amendment) Bill	
			(8) Land Survey Bill	
			(9) Land Acquisition (Amendment) Bill	
			(10) Local Government (Amendment) Bill	
			(11) Malawi Housing Corporation (Amendment) Bill	
			(12) Companies (Amendment) Bill	
16.	Review of the Laws on Marriage and Divorce	June, 2006	(1) Marriage, Divorce and Family Relations Bill	Before Parliament
			(2) Penal Code (Amendment) Bill	
17.	Review of Traditional Courts Act	September, 2007	Local Courts Bill	Enacted as Act No. 9 of 2011
18.	Review of the Constitution	September, 2007	(1) Constitution (Amendment) Bill	Before Cabinet
			(2) Constitution (Amendment) (No. 2) Bill	
			(3) Impeachment of President Bill	
			(4) Political Parties Registration and Regulation (Amendment) Bill	
			(5) Electoral Commission (Amendment) Bill	

No.	Report title	Year of publication	Proposed legislation	Status
			(6) Parliamentary and Presidential Elections (Amendment) Bill	
			(7) Courts (Amendment) Bill	
			(8) Ombudsman (Amendment) Bill	
19.	Development of Legislation on Declaration of Assets, Liabilities and Business interests by Public and Elected Officers	August, 2008	(1) Public Officers Declaration of Assets, Liabilities and Business Interests Bill	Before Cabinet
			(2) Parliamentary and Presidential Elections (Amendment) Bill	
			(3) Local Government Elections (Amendment) Bill	
20.	Development of HIV and AIDS Legislation	December, 2008	(1) HIV and AIDS (Prevention and Management) Bill	Before Cabinet
			(2) Employment (Amendment) Bill	
21.	Review of Education Act	March, 2010	Education Bill	Before Cabinet
22.	Development of Gender Equality Statute		Gender Equality Bill	Before Cabinet
23.	Development of Human Trafficking Legislation	February, 2011	(1) Trafficking in Persons Bill	Before Cabinet
			(2) Tourism and Hotels (Amendment) Bill	
			(3) Immigration (Amendment) Bill	
			(4) Penal Code (Amendment) Bill	
			(5) Extradition (Amendment) Bill	
			(6) Child Care, Protection and Justice (Amendment) Bill	

Appendix II

[English only]

List of human rights instruments to which Malawi is a party

	Convention	Date
1.	International Covenant on Civil and Political Rights (ICCPR)	22nd December, 1993
2.	International Covenant on Economic, Social and Cultural Rights (ICESCR)	22nd December, 1993
3.	Optional Protocol to the International Covenant for Civil and Political Rights	11th June, 1996
4.	International Covenant on the Elimination of All Forms of Racial Discrimination	11th June, 1996
5.	Convention on the Elimination of All Forms of Discrimination Against Women	17th March, 1987
6.	United Nations Convention Against Transnational Organized Crime	17th March, 2005
7.	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	17th March, 2005
8	Protocol Against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention Against Transnational Organized Crime	17th March, 2005
9.	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	2nd August, 1965
10	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	13th October 1965
11.	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	17th November, 1996
12.	Convention on the Rights of the Child	2nd January, 1991
13.	Convention Concerning the Prohibition and the Immediate Action for the Elimination of Worst Forms of Labour	19th November, 2000
14.	1951 Convention Relating to Status of Refugees	10th December, 1987
15.	1967 Protocol relating to the Status of Refugees	10th December, 1987
16.	Rome Statute of the International Criminal Court	1st December, 2002

	Convention	Date
17.	Geneva Conventions of 12 August 1949	5th January, 1968
18.	Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, 17 June 1925	14th September, 1970
19.	Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques, 10 December, 1976	5th October, 1978
20.	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977	7th April, 1997
21.	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction	14th June, 1998
22.	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	13th August, 1998
23.	Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993	11th June, 1998
24.	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000	21st September, 2010
25.	Convention on Cluster Munitions, 30 May 2008	7th October, 2009
26.	International Convention for the Suppression of Unlawful Seizure of Aircraft, 1970	21st December, 1972
27.	Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963	28th December, 1972
28.	International Convention Against the taking of Hostages, 1979	17th March, 1986
29.	Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973	14th March, 1977
30.	International Convention on the Suppression of Terrorist Bombing 1997	11th August, 2003
31.	International Convention for the Suppression of Financing of Terrorism, 1999	11th August, 2003
32.	Convention on Specific Aspects of Refugee Problems in Africa, 1974	4th November, 1987
33.	African Charter for Human and Peoples Rights	17th November, 1989
34.	African Charter on Rights and Welfare of the Child	17th November, 1999